GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Mysore State Electricity Board, Bangalore.

Award of the Additional Industrial Tribunal, Bangalore—published.

Read the following papers :—

(i) Letter A.I.T. No. 609-10/67-68, dated 19th October 1967 from Shri V. C. Ramachandran, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated 17th October 1967

Present :

Sri V. C. Ramachandran, B.A., B.SC., A.R.C.S., Bar-at-Law,
Presiding Officer.

A.I.D. No. 34 of 1966

I.D. No. 48 of 1965.

First Party—

The Workmen of Mysore State Electricity Board, Bangalore.

Second Party—

The Management of Mysore State Electricity Board, Bangalore.

A.I.D. No. 35 of 1966

I.D. No. 38 of 1966.

First Party—

The Workmen of Mysore State Electricity Board, Bangalore.

Second Party—

The Management of Mysore State Electricity Board, Bangalore.

A.I.D. No. 14 of 1966

I.D. No. 104 of 1966.

First Party—

The workmen of Mysore State Electricity Board, Bangalore.

Second Party—

The Management of Mysore State Electricity Board, Bangalore.

APPEARANCES

For the First Party—Sri K. Subba Rao, Advocate, Avenue Road, Bangalore.

For the Second Party—Sri B. R. Puttananjappa, Mysore State Employers' Association, Bangalore.

REFERENCES

A.I.D. No. 34 of 1966—No. PLM 323 LLD 65, dated 27th October 1965.

A.I.D. No. 35 of 1966—No. PLM 323 LLD 65, dated 25th February 1966.

A.I.D. No. 14 of 1966—No. LMA 20 LLD 66, dated 18th April 1966.

AWARD

These three References are in respect of Industrial disputes between the same Parties, *viz.*, the Workmen and the Management of the Mysore State Electricity Board, Bangalore. All the three References were referred to the Industrial Tribunal in Mysore, Bangalore, under Section 10(1) (d) of Industrial Disputes Act, 1947, by the Government of Mysore in their Orders Numbers as noted below, for adjudication.

A.I.D. No. 34 of 1966—No. PLM 323 LLD 65, dated 27th October 1965.

A.I.D. No. 35 of 1966—No. PLM 323 LLD 65, dated 25th February 1966.

A.I.D. No. 14 of 1966—No. LMA 20 LLD 66, dated 18th April 1966.

Subsequently by Order No. LMA 595 LLE 66, dated 29th November 1966, dated 17th December 1966, the Government withdrew the proceedings from the file of the Industrial Tribunal and transferred them to this Tribunal for disposal. All the three disputes relate essentially to the service conditions of that category of employees of Mysore State Electricity Board who are known as 'Daily-rated employees', 'Temporary Employees' and 'Tentative Employees'. As common questions of fact and law arise in all these three disputes, I propose to make one Award in respect of all these disputes a copy of which will be filed along with the records of other cases.

2. The points of disputes referred by Government are :—

(1) Whether the temporary employees of the Mysore State Electricity Board are entitled to the benefits of enhanced Dearness Allowance as contemplated in the Agreement dated 30th March 1962 and whether the Management is justified in depriving them all the benefits of that Agreement ?

(2) Whether the workmen are justified in demanding enhanced Dearness Allowance to the temporary employees of the Mysore State Electricity Board even if they are not entitled to it under the Agreement dated 30th March 1962 ?

(3) Whether the temporary employees who have put in a service of 240 days and more should be made permanent,

(4) Whether the workmen are justified in demanding that the rate of promotion of Graduates and non-graduates to the higher grades in the technical cadre should be in in the ratio of 3 : 2 ? and

(5) to what reliefs the workmen are entitled to even otherwise.

3. The Mysore State Electricity Board was constituted by the Government of Mysore and it came into existence on 30th September 1957. Except for those persons who were working in connection with the Hydro-Electric Construction Projects and Electrical Inspectorate all the other employees under the Government of Mysore in the Electrical Department prior to the formation of Mysore State Electricity Board were taken over by the Electricity Board. There were at that time about 5,000 temporary daily-rated employees working on the maintenance Section such as mechanics, linemen, helpers, pole-climbers, both skilled and unskilled who had come under the administrative control of the Mysore State Electricity Board. During the last 10 years or so, the number of such

temporary employees working under the Board had increased and the present number is about 13,000 due to the expanding activities of the Board and the failure of the Board to employ permanent workers or to absorb them into the permanent cadres. The Board originally paid wages as well as Dearness Allowance to the temporary employees, but the Management unilaterally revised the wage-structure and paid consolidated wages from 1960 to the temporary employees which included Dearness Allowance. The Union protested against the unilateral action of the Board and negoitations took place between the Union and the Board. As a result of these negotiations, a settlement was reached and a Memorandum of Settlement was drawn up under which the Board agreed to extend all benefits which may be granted by way of policy to the advantage of the employees of the Board.

4. The Government of Mysore sanctioned enhanced Dearness Allowance to their employees with effect from 1st April 1963 and that enhancement was adopted by the Board to the monthly paid employees under them. The Board failed to give enhanced Dearness Allowance to the temporary or daily-rated employees although the Board revised the Dearness Allowance on three occasions, once in 1963, another in 1964 and the third in 1965 in accordance with the order of the Government enhancing the Dearness Allowance to its own employees. The case of the workers is that under the settlement, they are entitled to the enhanced Dearness Allowance which has been granted to the other employees of the Board by virtue of the settlement under which the Board was obliged to pay them whatever benefits they had conferred on other employees of the Board. The Union brought it to the notice of the Board on several occasions, but the Management did not comply with their request saying that the matter was still under consideration. The Union then approached the Labour Commissioner for initiation of Conciliation Proceedings in respect of the Dearness Allowance and other benefits to the Daily-rated employees. The conciliation proceedings ended in failure and a failure report was sent to the Government. The Government then referred the matter for adjudication. The workmen contend that they are entitled to the enhanced Dearness Allowance which is paid to the other employees under the Board by virtue of the settlement entered with the Management on 30th March 1962.

5. The I Party submit that even if for any reason they are not entitled to the enhanced Dearness Allowance under the Agreement, they are certainly entitled to the enhanced Dearness Allowance as is being paid to the other category of workmen on account of increase in the cost of living which is rapidly rising since 1960. The wages for these daily-rated workmen had not been revised since

1960 and dearness allowance had not been paid to them and hence they are entitled to the demand for Dearness Allowance at least partially to neutralise the rising of the cost of living. They are also entitled to the increased Dearness Allowance on the ground that they should not be discriminated, as discrimination between different category of employees on the same establishment leads to strife, disharmony and heart-burning resulting in industrial unrest. The Board has the capacity to pay the Dearness Allowance as demanded and as these temporary employees are the lowest paid workmen, it is submitted that they are entitled to the benefit of increased dearness allowance which is given to other employees of the Board.

6. The daily-rated employees have put in service ranging from one year to fifteen years continuously without any break and in spite of such continuous service, the Board has not made them permanent denying them the security of service. Besides, these daily-rated employees have been denied the benefits of leave, festival holidays, medical relief, retirement benefits, etc., which are given to the other employees of the Board. In those circumstances, the workmen contend that permanency of service should be secured to the temporary employees provided they have put in more than 240 days of continuous service in a year. They should be given the same emoluments as other workmen doing the same job. The workmen further submit that refusal to make these temporary workmen permanent in spite of their continuous service is tantamount to unfair labour practice and exploitation and to deprive them of all the benefits of the permanency is against all cannons of social justice. The workmen, therefore, submit that their demand for permanency of service and other benefits to the daily-rated employees is reasonable and legitimate. The work performed by the daily-rated employees is of a peermanent nature. The generation, transmission and distribution of electricity are works of permanent nature and almost all the daily-rated employees are engaged in work of that kind. There is no difference in the nature of work done by the daily-rated employees and the permanent employees and it is highly discriminatory to treat them in different way. The workmen submit that their demand to make the daily-rated employees who have put in 240 days of continuous service as permanent employees is reasonable and legitimate and they are entitled for an award in terms of their demand.

7. There is a further demand that the ratio of promotions between the Graduates and Non-Graduates which has been fixed to be 3 : 2 has not been terminated by due notice and the benefits derived by the workmen under it are not extinguished. In spite of the Settlement, the workmen allege that the Board has changed the ratio of promotions between the Graduates and non-graduates to the cadre of sub-engineers and Assistant Engineers. The Board has

now proposed an amendment to the recruitment rules according to which 25 per cent of the posts of the Assistant Engineers are to be filled by direct recruitment from outside the Board's service and out of the balance of 75 per cent, 45 per cent to be filled up by promotions from the Graduate cadre and the remaining 30 per cent from the cadre of supervisors resulting in the ratio of promotions between the Graduates and the Non-Graduates being changed to 7 : 3 which prejudicially affect the supervisors. Because of this change, the prospects of promotions of supervisors who have acquired considerable experience are being denied. The workmen pray that an award be passed directing the management to keep the ratio of promotions between the Graduates and the non-graduates as 3 : 2. The workmen filed an additional claim statement in which they seek for making the clerical staff also who have put in 240 days of service in a year permanent.

8. The Management of the Mysore State Electricity Board which is referred to as "The Board" have resisted all the demands put forward by the workmen. They contend that they had never committed themselves under the Agreement, dated 30th March 1962 that they are agreeable to pay the enhanced Dearness Allowance to the temporary employees. The settlement is not one contemplated under Section 2(*p*) of the Industrial Disputes Act as necessary requirements have not been complied with. The conditions of service of the temporary employees have been different from those of the permanent employees. Under the Agreement, dated 30th March 1962, it was understood that from 16th November 1960 onwards the daily-rated employees would be entitled to only consolidated wages which include the Dearness Allowance and hence there is no basis for the claim of the I Party that there should be any enhancement in the dearness allowance payable to the temporary employees. As it was not the policy of the Board to extend the benefit of the enhancement of Dearness Allowance to the temporary employees, the II Party cannot be compelled to pay by virtue of any provision in the agreement to extend the same to its temporary employees.

9. The Management submits that there is no industrial dispute so far as the Reference for Dearness Allowance, irrespective of the agreement and, therefore, this Tribunal has no jurisdiction to adjudicate upon it. The reference itself, according to the Management, is vague and as consolidated wages had been paid to the daily-rated workmen, the question of payment of Dearness Allowance or enhancement of Dearness Allowance does not arise. The monthly-rated workmen had been getting basic pay and dearness allowance separately while the daily-rated workers are being paid consolidated wages from 1960, that they have been given increments periodically

and that their wages are fixed on the basis of the prevailing rates of wages in the concerned area. Hence the management submits that the question of payment of Dearness Allowance does not arise. The demand is belated and any payment can only take effect from the date of the Reference and not on any prior date.

10. The Management denied that the daily-rated workers are engaged in maintenance jobs. It is only the permanent monthly-rated staff who are engaged in maintenance work and the daily-rated workers look after the construction and seasonal jobs which are of casual nature. There is no exploitation as their wages are being fixed by the Superintending Engineers based on wage levels prevailing in that locality. Whenever vacancies arise in permanent posts, the seniormost daily-rated workers are absorbed subject to the prevailing rules of recruitment. Hence the demand that all workers who have put in 240 days should be made permanent is neither justified nor feasible.

11. There is no dispute whatsoever in maintaining the ratio of promotions as between the graduates and non-graduates at 3 : 2. The I Party, however, seems to have taken objection to direct recruitment to the cadres of sub-engineers and assistant engineers and that is a dispute which has not been referred for adjudication and hence this Tribunal has no jurisdiction to give an award. Besides, promotions are purely managerial function, entirely at the discretion of the management and cannot be imposed upon by the Award of the Industrial Tribunal. The II Party submits that the demand of the I Party for interfering in the percentage of direct recruitment has to be rejected.

12. In view of the above pleadings, by the Parties, certain additional Issues have been framed apart from the points of disputes referred to already. They are as follows :—

"(1) Whether the settlement dated 30th March 1962 is not a settlement as contemplated under Section 2 (*p*) of the Industrial Disputes Act and therefore, not binding under Section 18(1) of the Act ?

(2) Whether the benefits of the Settlement dated 30th March 1962 are available to the Parties thereto ?

(3) Whether the Policy of the Board was not to extend the benefits of the enhanced Dearness Allowance to the temporary employees of the Board ?

(4) Whether there was no industrial dispute with regard to the demand for enhanced Dearness Allowance and whether this Tribunal has no jurisdiction to adjudicate upon it ?

(5) Whether the points of dispute specified in the Order of Reference with regard to the Dearness Allowance are vague and as such the Reference is liable to be rejected ?

(6) Whether the claim for enhanced Dearness Allowance to the daily-rated temporary workers from 1962 is belated and cannot be gone into in this reference ?

(7) What is the date from which the enhanced D.A. if any to be given effect to ?

(8) Are the daily-rated workmen employed in maintenance work and other works of permanent nature as pleaded by the I Party ?

(9) Has the II Party broken the terms of settlement dated 30th March 1962 by resorting to recruitment of 15 per cent of graduates directly and thus changed ratio of promotion from 3 : 2 to 7 : 3 ?

(10) Are the members of the Clerical and Executive staff to be treated as permanent in the same factory as the daily-rated workers ?

(11) To what reliefs are the I Party workmen entitled ?"

13. The main controversy in this Reference are only two-firstly as to whether the daily-rated employees of the Mysore State Electricity Board are entitled to Dearness Allowance and secondly whether the daily-rated employees as well as the tentative clerical employees of the Mysore State Electricity Board are entitled to be absorbed into the permanent cadres. All the other Issues are not as important as these two and in any case as they are concerned with the jurisdiction of this Tribunanl to adjudicate upon the main controversy, I propose to deal with them first before going to the merits of the disputes.

14. The management contends that this Tribunal has no jurisdiction to decide the points at Issue on various grounds, firstly, that there was no industrial dispute with regard to the claim for Dearness Allowance and hence the Reference is bad, secondly that the points of dispute specified in the Order of Reference are vague and as such, the Reference is liable to be rejected and thirdly that the claim for enhancement of Dearness Allowance to the daily-rated employees is belated and lastly this Tribunal has no jurisdiction to adjudicate on the question of direct recruitment.

15. It is common ground between the Parties that eversince the settlement was entered into between the Management and the Workmen in 1962, the I Party Union has been agitating for payment of Dearness Allowance to the daily-rated employees as has been granted to the permanent employees. The matter was taken up for

conciliation before the Commissioner of Labour where the conciliation proceedings with regard to the Dearness Allowance had taken place which resulted finally in failure. The Mysore State Electricity Board Union had made demands subsequent to expiry of the Settlement in 1965, one of the demands being the payment of the Dearness Allowance to the Daily-rated employees. In view of the agitation carried on by the Union for Payment of Dearness Allowance to the daily-rated employees and for their absorption into the permanent cadres, it seems to me idle for the management to contend that there has been no industrial dispute. I shall refer to the correspondence Ext. W. 20 in which it is stated that the benefit of increased rate of Dearness Allowance is not extended to the temporary labourers and as the cost of living is very high and the employees are hard-hit, it is not known how the temporary labourers in the industry are better placed and that they should be contented with the minimum wage of Rs. 1.25 P. per day all found, in view of such high cost of living. In view of the correspondence and the negotiations that had taken place, it cannot be denied that there was an industrial dispute with regard to the dearness allowance and absorption of the daily-rated employees and hence the Government was justified in making a Reference as conciliation proceedings ended in failure, nor is there anything vague in the demand of the I Party with regard to the Dearness Allowance of the daily-rated employees as their claim throughout has been that they should be treated on par with the permanent employees of the Board. In those circumstances, the Reference is valid and is not vitiated by any infirmities nor is there any ground in support of the contention of the management that there has been belatedness in the demand for Dearness Allowance as the I Party has been repeatedly making the demand even at and before the time of the Reference.

16. There is, however, one matter about which the jurisdiction of this Tribunal to adjudicate could be successfully assailed. The Demand of the workmen is that the ratio of promotion of graduates and non-graduates to the posts of Assistant Engineers or Sub-Engineers, should be in the proportion of 3 : 2. According to the settlement between the Parties, the proportion of the promotion was fixed at 3 : 2 under clause 5 of the Memorandum of Settlement dated 30th March 1962. The ratio of promotion of graduates and non-graduates to the grades of Sub-Engineers and Assistant Engineers will be in the proportion of 3 : 2, *i.e.*, for every three graduates promoted, two non-graduates will be promoted. The case of the management is that the promotion in that proportion have been strictly adhered to, and that eversince the date of Settlement, for every 3 graduates promoted to the posts of Sub-Engineers and the Assistant Engineers, two non-graduates who were Supervisors had been promoted and therefore, there was no variation or failure to implement the settlement. The I Party also admits that promotion to the grades

of Sub-Engineers and the Assistant Engineers from Junior Engineers and Supervisors has been in the proportion of 3 : 2. Hence there could be no industrial dispute at all with regard to that matter. The point of dispute referred to this Tribunal is whether the workers of the Mysore State Electricity Board, Bangalore, justified in demanding that the rate of promotion of graduates and non-graduates to the higher grades in the technical cadre should be in the ratio of 3:2. Both the Parties have agreed that, that is the ratio contemplated under the Memorandum of Settlement and that is the ratio which has been followed in promoting the Junior Engineers and the Supervisors to the higher grades of Sub-Engineers and Assistant Engineers. The learned Counsel for the First Party argued that the management have recently introduced in the year 1966, long after the Reference, a new rule under which they could recruit directly 25 per cent of the Assistant Engineers as a result of which, the number of posts available for promotion from Junior Engineers and Supervisors to the posts of Assistant Engineers have been reduced, to 75 per cent and at present 45 per cent of the vacancies of the Assistant Engineers are available by promotion to the Junior Engineers and only 30 per cent of the vacancies are available to the Supervisors and therefore, out of the vacancies of Assistant Engineers, the proportion of graduates to non-graduates will be not as 3:2 but 7:3, *i.e.*, for every 7 graduates taken as Assistant Engineers only three supervisors are promoted to that post. Therefore, it is argued the ratio agreed to under the Settlement has been considerably altered. In my view, the contention of the learned Counsel for the First Party is a matter which is not covered by the Points of Dispute referred to this Tribunal. I am only called upon to adjudicate as to whether the ratio of promotion between Graduates and non-graduates should be 3:2 and on that Issue there is absolutely no controversy because the Management accepts the promotion between the Graduates and the non-graduates should be in the ratio of 3:2 and that they have been following that ratio in the promotions granted to those who are in service under the Second Party from out of Graduates and non-graduates. The learned Counsel wants me to adjudicate upon the question as to whether the Mysore State Electricity Board is justified in recruiting 25 per cent of the Assistant Engineers directly from the open market, but that is an Issue which is not referred to me and therefore, in my view, I have no jurisdiction to decide that question. Besides, recruitment to any posts is purely the managerial function and it is not open to this Tribunal to decide how recruitment should take place. There are indeed very many reasons why a certain percentage of officials in the Board should be by direct recruitment. It often happens that the brilliant engineers would not be willing to start at a lower scale and would look to other private enterprises which may offer them better conditions of service. The Board should also have first class men on the staff and that is possible only by direct recruitment. In any case, it is not for me

to say as to how the Board should recruit its officials. I can only consider the question of promotions from those already working in the Board and so far as that matter is concerned, there has been no violation of the principles enunciated in the Memorandum of Settlement, *i.e.*, for every three promotions of graduates to the post of the Assistant Engineers or the Sub-Engineers, there must be two promotions from the grade of supervisors who are non-graduates. My finding, therefore, is that the increase in percentage of direct recruitment is not covered by the present reference and this Tribunal has no jurisdiction of adjudicate upon that dispute and that Second Party has not broken the terms of settlement dated 30th March 1962 by resorting to recruitment of 25 per cent of graduates directly and has not changed the ratio of promotions from 3:2 to 7:3.

17. Having disposed of the preliminary Issues with regard to the jurisdiction of the Tribunal, we may now concentrate upon the main Issues which, as stated before, are only two. One regarding the Dearness Allowance to the Temporary or daily-rated employees and the other with regard to the absorption. Before going into the matter, it may be necessary to recall the history of the Mysore State Electricity Board. Originally, in Mysore State, all the electrical undertakings were carried on by the Government itself. It was responsible for generation, transmission and distribution of Electricity. The Government issued a notification on 27th September 1957 constituting the Mysore State Electricity Board, as per Ext. W. 1, those who were in service under the Government Electrical Department except for certain staff connected with the construction of projects, were transferred to the Board on the understanding that they will be entitled to the same conditions and privileges which they had enjoyed while they were in the electrical department. Among those who were transferred from the Government Electrical Department to the Mysore State Electricity Board were apart from the permanent staff and workers, the daily-rated workers who had been employed as mechanics, wiremen, linemen, helpers, pole climbers both skilled and unskilled. The number of such daily-rated employees at that time in 1957 was only about 5,000. After the Board took up the Electrical Department from the Government of Mysore, its activities considerably expanded with the result that they had to increase the strength of their employees to cope up with ever increasing work with the result that to-day, they are said to be between 13,000 to 15,000 daily-rated employees working under the Board. The daily-rated employees were paid wages and dearness allowance only up to the year 1960 when the Management unilaterally started paying them what they called the 'consolidated Wages' which is inclusive of the Dearness Allowance. There was discussion between the Union and the Management and finally they reached a settlement dated 30th March 1962 under which the wages of the daily-rated employees had

been fixed. Further a clause was added to the settlement that the Board agreed not to curtail or withdraw any of the existing facilities of the above benefits or declare lock-out during the said period of three years, but shall extend all benefits that the Board may grant by way of policy to the advantage of the employees of the Board. Subsequent to the Memorandum of Settlement, the Board had enhanced the Dearness Allowance to its permanent employees, on not less than five occasions while no dearness allowance was paid to the daily-rated workmen. The case of the workmen is that by virtue of the Memorandum of Settlement under which the management is under the obligation to extend the benefits given to the permanent workmen to the daily-rated employees. The daily-rated workmen should be given the same dearness allowance as paid to the permanent staff also to the temporary labourers. Alternatively, the workmen contend that they are entitled to Dearness Allowance as the cost of living has arisen enormously during the last five years and that they should be given such dearness allowance which would neutralise the rising cost of living.

18. I shall take up the first stand of the workmen as to whether the daily-rated employees are entitled to the dearness allowance paid to the permanent staff under the Settlement, dated 30th March 1962. The settlement itself is a valid settlement as necessary formalities had been complied with. Even otherwise, it is an agreement which is signed by the Parties copies of which have been sent to the appropriate Government and the Conciliation Officer. It is, therefore, binding on the Parties, *viz.*, the Mysore State Electricity Board Employees' Union and the Management of the Mysore State Electricity Board. According to that settlement its object is to maintain harmonious relationship between the employees and the Board, to promote the stability and the prosperity of the Board for the benefit of all who are associated with the Board in order to create full understanding of and regard for the respective rights, obligations and responsibilities of both the Board and the Union. The service conditions of all employees had been fixed, under Clause 2 under the heading, 'Implementation of Revised Wages'. The rates of Dearness Allowance to the temporary labourers had been fixed up to 15th November 1960 when the dearness allowance was merged with the basic salary and from then onwards the daily-rated employees were paid consolidated wages. Both the Parties under the Memorandum of Settlement agreed that from 16th November 1960 and onwards the daily-rated employees will only be paid consolidated wages which includes Dearness Allowance as approved by Government in G.O. No. PWD 142 EEB 60, dated 3rd October 1960 and adopted in Board Order No. MSEB AB. 2165, dated 5th November 1960. It is clear, therefore, that under the Memorandum of Settlement, the parties have agreed that from 16th November 1960, the daily-rated employees

will not be entitled to any separate Dearness Allowance, but are only entitled to consolidated wages which have been fixed. Hence, so long as the settlement is in force and the terms thereof have not been altered or modified by any subsequent settlement or an award, the First party-Union are not entitled to claim the dearness allowance for the daily-rated employees.

19. The argument advanced by the learned Counsel for the First Party is that the last clause in the settlement under which they are entitled to all the benefits that the Board may grant by way of policy to the advantare of the employees of the Board gives them the right to demand the Dearness Allowance at the same rate as that of permanent employees because subsequent to the settlement the Board had conferred certain benefits with regard to the Dearness Allowance to the permanent employees. As stated before, the Board had implemented the Government Order enhancing the Dearness Allowance from time to time between 1962 to 1965 on or about five occasions. The learned Counsel for the First Party contended that those benefit which had been granted to the permanent employees must under the last clause of the settlement be extended to the daily-rated employees also. I am not, however, convinced that, that argument has any force. In interpreting the settlement, all the terms of the settlement must be taken into consideration and as far as possible reconcile the various terms and should not ignore any one of the terms unless it would lead to absurdity. There is a specific term in the settlement that from 16th November 1960 and onwards, the daily-rated employees are not entitled to separate Dearness Allowance, but only to the consolidated wages and hence they cannot demand dearness allowance at any rate so long as the settlement is in force. What the last clause intend is only with regard to the other benefits which the Board may grant to all employees which had not been covered under any terms of settlement. Besides the last clause deals only with the benefits conferred on all employees by way of policy, but it does not restrict the Board from conferring benefits to any particular category of employees. The enhancement of Dearness Allowance after 1962 was declared as a policy of the Board only to the monthly paid employees which means permanent employees of the Board. It was argued that even the daily-rated employees are paid monthly. but the words, 'monthly paid employees' means that their pay is calculated at so much per month, while in the case of the daily-rated employees pay is calculated at so much per day and only for the days during which they have worked. There is, therefore, a real distinction between the monthly-rated workers and the daily-rated workers and the time of payment is not of much importance. but only the rate of which the pay is calculated. The Orders passed by the Board from time to time is only in respect of monthly-rated employees or permanent staff who get pay whether

they worked all the 30 days in the month or not, as against the daily-rated employees whose wages are calculated per day and only for the days on which they work. It is open to the Board to restrict the benefit to a particular class of employees and such benefits cannot be extended to all the employees as contended by the learned Advocate for the First Party. To take an illustration, as pointed out by the learned Counsel for the Management, if the Management tomorrow passes an order that all Assistant Engineers should be provided with jeeps for better performance of their duties, it does not necessarily follow and it would lead to absurdity that all employees of the Board must also be provided with jeeps, because the settlement states that the Board shall extend all the benefits that the Board may grant by way of policy to the advantage of the employees of the Board. What it really means is that if the Board orders by way of policy that a particular benefit should be extended to all its employees, no particular group should be excluded from that benefit. In other words, if the Board declares 'Vijayadasami' a holiday, it cannot ask the clerks to come and work and grant holiday only to the others. In that view of the matter, it seems to me obvious that under the Settlement at any rate, no Dearness Allowance can be claimed by the First Party-Union. The only interpretation that can be given to the settlement is that the workmen are entitled to consolidated wages from 16th November 1960 and onwards which is inclusive of Dearness Allowance. Their claim for Dearness Allowance can be considered only after the termination of the Memorandum of Settlement which has been duly terminated by the Management. The field is now open to demand the Dearness Allowance for the daily-rated employees on the ground of increase in cost of living and the necessity to neutralise the ever increasing cost of living.

20. If the workmen are not entitled to claim the Dearness Allowance which was being paid to the permanent employees of the Board under the Settlement, datd 30th March 1962, the next question for consideration is whether the workmen are entitled to claim the Dearness Allowance at the same rate as those paid to the permanent employees by virtue of increase in the cost of living. It cannont be disputed that there has been a great increase in the cost of living during the last few years. The consumer price index has risen from 379.8 in 1957 to 618.5 in 1965 and to-day it is said to be about 740, that is to say during the course of last ten years, it has increased by nearly 400 points. The daily-rated employees whose consolidate wage was fixed in the year 1961 continued to get the same wage without any increase eversince 1961. It is said to be Rs. 1.25 per day and for 26 days in a month for which he is paid, his wages would be only about Rs. 32.50 per month with which he is supposed to maintain his family in these hard days. It is obvious that with the cost of consumer price index being round about 700 points, it is impossible for any person to maintain his family with the meagre

income that the daily-rated employees' are being paid. It is, to say the least, below the minimum or subsistence wage and the board is not justified in keeping its daily-rated employees in such a miserable state of affairs. The industrial law has laid down and it is supported by a number of authorities that when the industry is in a position to pay, it must keep its workmen on what is called on fair wage basis which is higher than the minimum wage and below living wage. Although the living wage may not be within the easy reach of the workman in the context of prevailing economy, at any rate, when the industry could afford it should pay at least the minimum of fair wage. It has been variously estimated that minimum of fair wage in Mysore State would be somewhere about Rs. 230 at present. The Mysore State Electricity Board has financial capacity to meet the demand of the daily-rated employees. At any rate, it is the bounden duty of the Board to give to all its employees the need based wage. It is not seriously disputed that the Board has capacity to pay. The activities of the Board have increased and so also its financial resources and while the gross revenue when it was started in 1957 was Rs. 215 lakhs for the six months in 1957-58. In 1965-66, the revenue has gone upto 1,235 lakhs. The nett profit during these years had increased from 9 lakhs to 150 lakhs. The resources has also considerably increased from 18 lakhs to 29 lakhs. From these figures, it could be seen that the Board has enormous resources and cannot plead its incapacity to meet the just demands of the daily-rated employees.

21. There is another important reason as to why the daily-rated employees should be treated on par with the permanent employees. The work that has been turned out by the daily-rated employees are identically the same as those of the permanent employees. Even though they do the same kind of work, the daily-rated employees are deprived of all the facilities and benefits enjoyed by the permanent workmen. The daily-rated employees do not get Dearness Allowance. They are not entitled to any leave. They get pay only for the days they work, and other facilities and benefits enjoyed by the permanent workmen are denied to them. It must be remembered that it is one of the cardinal principles enshrined in our Constitution that equal work must be rewarded with equal pay and to each according to his need and from each according to his capacity. That principle has been given a go-bye by making this invidious distinction between the daily-rated employees and the permanent employees. It must be remembered also that the needs of the daily-rated employees are as urgent and imminent as those of the permanent employees and to deny them the privileges enjoyed by the permanent employees is to say the least, against the directives of our Constitution.

22. The First Party has let in considerable evidence in order to show that the daily-rated employees do identically the same work as those done by their counterparts in the permanent cadres. I shall refer to a few witnesses, who have been examined by the First Party in support of this matter. Sri Rama, W.W. 2, has been working in the Board ever since its inception in 1957 and although he has been working for the last ten years, he is still shown as a temporary labourer. He is working in a workshop in the New Receiving Station at Rajajinagar. His work consists of cutting and punching machines. There are about 300 workmen in that workshop but only 22 of them had been made permanent and the rest are all shown as temporary workmen. He has been continuously working for the last 10 years. He has been denied enhanced pay, Dearness Allowance, Pension and medical benefits. According to him, the nature of work done by him is such that it is always required by the Electricity Board. There is no distinction between the work done by the temporary workers and that turned by the permanent workmen. Byrappa is a lineman and he has also been working as a temporary worker in the Board eversince its inception continuously and yet he has not been made permanent. There is no difference between the work done by him and that done by the permanent employees. Hanumanthappa is a maistry in the Electrical 'A' Station. He has been working in the distribution Section for the last eight years attending to street lighting, parallel lighting, giving service connection to the houses, connection to transformers which are all permanent works. According to him, the kind of work that he does is done by both permanent and temporary workmen. The reason why some of them have been kept temporary is to deprive them of wages, leave and wages on holidays. He says that both temporary and permanent workers carry on work together. Kempiah has been working in Mysore State Electricity Board since the last 12 years. He is still a daily-rated employee, although he has been working for 12 years without any break and his work is of the same kind as that of the work turned out by the permanent employees. Lakshminarayana is a supervisor and he deposes that both the permanent as well as temporary employees work together and the same work has been done by both the permanent and temporary workers. Ext. W. 42 is a list of wages paid to the permanent staff who are entitled to the various benefits like D.A., Compensatory-*cum*-House Rent allowances which are denied to the daily-rated employees as well as the leave facilities. Subramanyam is a permanent employee and he states that in the Central Stores, Bangalore, where he works, there are 70 or 80 permanent workmen and about 60 or 70 are temporary workmen and the work of loading and unloading is done by permanent and temporary workmen together and there is no difference between the work done by the permanent and temporary workmen. Ganeshan is a helper working in the Central Stores and although he has put in six years

of service, he is still a daily-rated employee and he has not been paid any Dearness Allowance. The discrimination is not only between the daily-rated employees and the permanent employees, but also between the daily-rated labourers as against the tentative or temporary employee in the higher cadre, *viz.*, clerical staff. In that clerical cadre, the tentative candidates entertained in the service are being paid Dearness Allowance and are given increments and other facilities enjoyed by their counterparts in the permanent cadre while the daily-rated labourers who are the lowest paid employees of the Board are denied these privileges. As a matter of fact our object is to lift up the lowest category of employees and to bring down if necessary the highest paid employees so that the time may come when this gap between the highest paid and the lowest paid will be very narrow, if such a gap should exist at all. The Board seems to have pursued a policy of widening the gap instead of narrowing it within reasonable limits. A. P. Srinivasa Murthy has been working as a Ledger Clerk as a temporary employee in 1963, he states that there were only four zones in Bangalore and now it is increased to six zones. There were then 10 ledger clerks and now there are fourteen. The work done by each clerk is the same, *viz.*, issue of 600 bills a month and to enter the collections. The number of clerks have been increased because the work has increased as the number of consumers have become more. P. Nagiah is another clerk who speaks to the expanding activities of the Board and while there was only one office in 1964 in Malleswaram and now there are three offices and yet he is continued as a temporary worker. B. C. Marilingaiah was taken as a supervisor in 1964 as a temporary employee. He was retrenched in 1965 and reappointed on 14th December 1965, *i.e.*, within two months and continued to be a temporary supervisor, although there was work to be done in that Department. Krishnamurthy was taken as a clerk in Malleswaram North Zone which was later on bifurcated and made into two zones, one in Rajajinagar and one in Yelahanka. According to him, both the permanent and the temporary clerks do the same work and yet he is denied free lighting and festival advance enjoyed by the permanent workmen. These are some of the persons who have been greatly affected by this discrimination between the temporary employees and the permanent employees, but suffice to say that the daily-rated labourers must be given the same rate of Dearness Allowance as given to the permanent workers not only on the principle of equal work equal pay but also on humane consideration that they cannot possibly cope with the even increasing rise in the cost of living.

23. In calculating the Dearness Allowance payable to the daily-rated employees, certain factors have to be taken into consideration. In the first place at the time of consolidation of the pay and the Dearness Allowance in 1960, the entire Dearness Allowance was merged with wages so far as the daily-rated employees are concerned,

but with regard to the permanent employees, only a portion of the Dearness Allowance was merged with the basic pay and therefore that portion of Dearness Allowance which has not been merged in the case of permanent employees will have to be deducted from the Dearness Allowance payable to the daily-rated employees because that portion of Dearness Allowance has already been merged with the consolidated wages of the daily-rated employees. In the second place, the management have adduced evidence to show that the consolidated wages have been subsequently revised in the case of all the daily-rated employees. Hence the benefits that they have got by virtue of the revision of the consolidated wages should also be deducted from the Dearness Allowance payable to them. These two deductions have to be made from the Dearness Allowance which is being paid to the permanent employees and the Dearness Allowance to which the daily-rated employees are entitled will be the amount remaining after such deductions.

24. There are a number of authorities which lay down the proposition that industrial adjudication cannot tolerate discrimination practised in any industry between one worker against another worker. I shall refer to a few of them which laid down those principles. In 1964 I LLJ 750 the following observations are made :—

> "No justification was put forward on behalf of the appellant for making this discrimination in this matter between the same categories of clerks who rejoined the appellant factory year after year when the new season began. We can see no warrant for making this discrimination in the matter of retaining allowance between one seasonal clerk and another and as the appellant was admittedly paying about half of the seasonal clerks year after year it must be held that the other half of the seasonal clerks is equally entitled to the retaining allowance."

In 1964 I LIJ 743, the Supreme Court held that the Industrial Tribunal is right in stating that in the circumstances of the instant case, there should be no disparity or difference between the Dearness Allowance payable by the company to its employees at the two factories.

In 1962 II LLJ 366 the Supreme Court observed that it cannot be denied that the existence of industrial peace and harmony and the continuance of peace and harmony are relevant factors, but their importance should not be unduly exaggerated. If the Appellants thought it necessary to provide for additional earned leave to their old employees, there is no reason why there should not be made a similar provision in respect of the new employees as well.

25. Taking the above circumstances into consideration in order to preserve industrial peace and harmony and in order to avoid frustration and discrimination and disparity between an employee and employee, the demand of the workmen that the daily-rated employees should be treated on par with the permanent employees in the matter of Dearness Allowance should be accepted subject to the modifications indicated above.

26. The last point of dispute between the Management and the workmen is the demand for making daily-rated workers who have put in a service of 240 days and more should be made permanent. The permanent workmen is defined in industrial law as one engaged in the permanent nature of work throughout the year and who has completed his probationary period if any and a temporary workman is one who is engaged in the work of a temporary and casual nature or to fill in a temporary need of extra hands on a permanent or temporary job. From this definition it is obvious that if a worker is engaged in a permanent nature of work throughout the year he is entitled to be made permanent. In the instant case, most of the daily-rated workers are engaged in the work of permanent nature. I need not again refer to the evidence which has been quoted in *extenso* when discussing the question of discrimination between worker and worker. That evidence conclusively proves that most of the daily-rated employees have been engaged in a permanent nature of work throughout the year. There are no doubt some daily-rated employees who are not engaged in a work of permanent nature, but fortunately, in this case, it is possible to distinguish the case of those who are not engaged in a work of permanent nature from those who are employed in such works. The Mysore State Electricity Board has two separate engineers, one called the Chief Engineer, (Construction) and the other, the Chief Engineer (General). The Chief Engineer (Construction) employs workmen for the purpose of construction while the Chief Engineer (General) looks after the maintenance and distribution of Electricity. The daily-rated employees who are under the Chief Engineer (Construction) will not be engaged in the works of permanent nature because as soon as the construction of a project is completed. it is handed over to the Chief Engineer (General). The Chief Engineer (General) will, therefore, have mostly workmen whose employment is of a permanent nature. Hence those daily-rated employees who are working under the Chief Engineer (General) are entitled to be made permanent if they satisfy certain conditions, *viz.*, they should have worked for at least 240 days in a year and found suitable for the kind of work that they have been doing. It must be remembered that the daily-rated employees under the Board has enormously increased from mere 3,000 at the inception of the Electricity Board in 1957-58 to the present figure of 14,000 while the permanent maintenance staff which was

about 2,500 in 1957-58 has risen only to 6.500 in 1960. It seems to me, therefore, that a large amount of work is taken from the daily-rated employees on terms which are very unfavourable to them which really amounts to an unfair labour practice. The Board, itself, seems to have felt that what was being done was not fair because during the discussions between the Officers of the Board and the Representatives of the Union on 7th September 1965 as per Ext. W. 2(a) decided to recommend that this question of absorption of temporary labourers in the Mysore State Electricity Board be considered on the lines on which the Madras State Electricity Board had solved this problem as indicated in their Board Order—Proceedings MS. No. 236, dated 16th February 1959, reproduced below :—

> "Permanancy of Nominal Muster Roll Workers—About 5,000 Nominal Muster Roll workers will be absorbed into the Operation Subordinate Service within one year and a further two thousand Nominal Muster Roll workers in the succeeding period of two years. The absorption during 1959 will be on a phased programme of about 400 or 450 workers per month so that 5,000 workers will be absorbed within the calendar year. The absorption of the workers should be in the order of Seniority subject to suitability."

In 1961 I LLJ 649, the Supreme Court has stated that the proper construction of the definition of a "Permanent" workman "in the standing orders would be" A workman engaged on a work of permanent nature which lasts throughout the year and who has completed his probationary period, if any, not being one engaged to fill in a temporary need of extra hands of permanent jobs, that is for example in leave vacancies". The Model Standing Orders also defines a permanent workman as a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationery period of three months in the same or another occupation in the industrial establishment including breaks due to sickness, accident, leave, lock-out, strike or involuntary closure of the establishment. In the instant case, as stated before and according to the evidence adduced by the I Party, the work shown in the General Department as against the construction Department, is of a permanent nature lasting throughout the year. As a matter of fact some of these daily-rated workers have been in continuous employment of the Board eversince its inception in 1957. Some of the clerical staff have also been in continuous service for a number of years even drawing the annual increments and getting all the benefits which are given to the permanent employees. Apart from the evidence of the I Party, the evidence adduced by the Management itself shows that the work done by these temporary employees are of permanent nature. Sri Anthony Periera who is the Executive

Engineer in the II Party-Board, states that in his opinion the number of permanent workmen are insufficient to do all the maintenance work and there are targets for rural electrification and Irrigation Pumps Schemes and as the activities of the Board are increasing year by year it will take a minimum of 20 years to electrify all the rural villages.

27. We will next consider how this problem of absorption of temporary workers has been solved in other public concerns. According to the Madras Electricity Standing Orders, a temporary workman who has been specially recruited in connection with the operation, maintenance and distribution works, shall be eligible for the benefits of the permanent workman under the Standing Orders, after he completed one year's service as per Rule 3 in Ext. W. 43. Under the Standing Orders for workmen under the K.G.F. undertakings, if a temporary workman continues for more than 3 consecutive months, he shall be entitled to the privileges and benefits accruing to the permanent workmen. It is unnecessary to repeat that the evidence shows that the daily-rated employees side by side work with the permanent employees of the Board in operation, maintenance and distribution of Electricity under Chief Engineer (General). Therefore, they are entitled to be deemed as permanent if they worked for 240 days within one calendar year.

28. The next question for consideration is how these daily-rated employees have to be absorbed into the permanent cadre. As stated before there are 13,500 temporary employees of which probably about 2,500 are working under Chief Engineer (Construction). Excluding them, there will be about 11,000 daily-rated employees who have to be absorbed as permanent workmen. The procedure followed by Madras Electricity Board is to have a phased programme of absorption under an Agreement between the Madras State Electricity Board and the representatives of the Tamilnad Electricity Workers Federation. One of the terms of which is that about 5,000 nominal muster roll workers will be absorbed into operation subordinate service within one year and a further 2,000 in succeeding two years. It must however, be remembered that the Agreement came into effect as early as 1959, probably within a few years after the inception of Madras State Electricity Board. Adopting a similar formula for the temporary labourers and also for the temporary clerical staff, the absorption can be made of 50 per cent of the temporary daily-rated employees within six months and 50 per cent of the remaining in another six months' time and the balance within six months thereafter, so that the entire absorption can be effected within a period of 1½ years subject of course to the above conditions, *viz.*, that they should have worked for 240 days in a year and according to seniority and suitability the fitment being according to the corresponding posts without loss of emoluments.

29. My findings on the other Issues are as follows :—

1. The temporary employees are not entitled to benefits of enhanced Dearness Allowance under the Agreement dated 30th March 1962.

2. The Policy of the Board was not to extend the benefit of the enhanced Dearness Allowance to the temporary employees of the Board.

3. The workmen of the Mysore State Electricity Board justified in demanding the enhanced Dearness Allowance to the temporary employees of the Mysore State Electricity Board irrespective of the fact that under the terms of the Settlement, dated 30th March 1962 arrived at between the Management of the Mysore State Electricity Board and the employees union, the said benefits have not been extended to them.

4. The temporary employees are entitled to the enhanced Dearness Allowance granted to the Permanent employees.

5. The next question is the date the enhanced Dearness Allowance should be given effect to. The Reference is dated 27th October 1965, but it appears that they were given some relief by enhancing the consolidated wages for the period upto 31st March 1966. The present order regarding the Dearness Allowance should, therefore, come into force as and from 1st April 1966 which will be the beginning of the Financial year 1966-67. The Reference is, therefore, only with regard to the Dearness Allowance and not with regard to the wages and hence the consolidated wages mentioned in the Settlement has to be taken and to it the Dearness Allowance as given to the permanent employees be added less what the permanent employees got at the time of the consolidation of wages as Dearness Allowance because it must be remembered that while the entire Dearness Allowance was merged with the consolidated wages in respect of the Daily-rated employees and in the case of the permanent employees, only a portion of Dearness Allowance was merged. Hence that portion of Dearness Allowance which was not merged with the consolidated wages of the permanent workers must be deducted in calculating the Dearness Allowance for the temporary employees.

30. In the result, I make the following AWARD :—

1. That the management do pay to the daily-rated employees of the Mysore State Electricity Board the Dearness Allowance from 1st April 1966 and consolidated wages as contem-

plated in the Memorandum of Settlement dated 30th March 1962 the Dearness Allowance at the following rates :—

		From 1st *April* 1966	*From* 1st *January* 1967
		Rs.	Rs.
Below Rs. 90 per month	..	28	37
Rs. 90 to 109 per month	..	45	55
Rs. 110 to 149 per month	..	45	60
Rs. 150 to 209 per month	..	50	70
Rs. 210 to 399 per month	..	61	90

If they had been paid a higher consolidated wages from 1st April 1966 then what was fixed under the Settlement dated 30th March 1962, the increase in the consolidated wages will be deducted from the Dearness Allowance payable to them under this award.

2. The daily-rated employees working under the Chief Electrical Engineer (General) will be absorbed according to their seniority into the permanent cadre provided they have put in 240 days service in one calendar year and they are found suitable by the Management in the following phased programme :—

Fifty per cent of the daily-rated employees as well as the tentative clerical staff and supervisory will be absorbed into the permanent cadre within a period of six months from the date this Award becomes enforceable. Fifty per cent of the remaining daily-rated employees and tentative clerical and supervisory staff will be absorbed within a period of six months thereafter, the remaining daily-rated employees tentative clerical and supervisory staff to be absorbed within the next six months after the absorption of the second group. They may be fitted to the corresponding posts without loss of emoluments. This order will apply only to the daily-rated employees under the Chief Engineer (General) and not to those working under Chief Engineer (Construction).

The demand regarding the proportion of promotion of Graduates and non-graduates to the posts of Assistant Engineers is rejected.

As each party has suceeded in part, each party is directed to bear its own costs.

V. C. RAMACHANDRAN,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.
17*th October* 1967.

P.R. 1301

ORDER

Bangalore, dated the 21st October 1967

S.O. 2017. WHEREAS by State Government Orders No. (i) PLM 323 LLD 65, dated 21st October 1965, (ii) PLM 323 LLD 65, dated 25th February 1965 and (iii) LMA 20 LLD 66, dated 18th April 1966, the Industrial Disputes between the Workmen and the Management of Mysore State Electricity Board, Bangalore were referred to the Industrial Tribunal, Bangalore for adjudication;

AND WHEREAS by G.O. No. LMA 595 LLE 66, dated 29th November 1966, the disputes were transferred to A.I.T., Bangalore;

AND WHEREAS Additional Industrial Tribunal, Bangalore has submitted to the State Government its common award in respect of the said Industrial Disputes.

NOW THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 20 LLD 66.]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT,

Under Secretary to Government,
Food, Civil Supplies and Labour Department (Labour).

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